

Message

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OPPT/OPP/OCSP Clips
Friday, April 19, 2019

Asbestos

Hunton Andrews Kurth: EPA Issues Significant New Use Rule Banning Certain Uses of Asbestos and Foreshadows Forthcoming Asbestos Risk Evaluation

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Inside EPA: New CDC Data Drives Renewed Criticism On Administration's Lead Plan
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PCBs

E&E News: Honeywell to clean up pollution near former N.C. plant
Poughkeepsie Journal: Hudson River among 'most endangered' rivers, group says

Pesticide

Florida Today: Bees endure countless threats in Florida
The Washington Post: Court: EPA has 90 days to justify use of dangerous pesticide

PFAS

The Detroit News: PFAS-related suits gain steam as litigants hit Wolverine Worldwide

Toxics

Inside EPA: EPA Urges Court To Reject Challenge To Mercury Inventory, Waivers
Sierra Sun Times: California Attorney General Opposes the Trump Administration Plan to Undermine Mercury and Air Toxics Standards

ASBESTOS

Hunton Andrews Kurth

EPA Issues Significant New Use Rule Banning Certain Uses of Asbestos and Foreshadows Forthcoming Asbestos Risk Evaluation

<https://www.huntonretailindustryblog.com/2019/04/articles/environmental/epa-issues-significant-new-use-rule-banning-certain-uses-of-asbestos-and-foreshadows-forthcoming-asbestos-risk-evaluation/#page=1>

Alexandra B. Cunningham, Lori Elliot Jarvis, and Elizabeth Reese

Thursday, April 18, 2019

On April 17, 2019, the United States Environmental Protection Agency (EPA) issued a final “significant new use rule” (SNUR) prohibiting over one dozen uses of asbestos from returning to the marketplace without EPA review and approval.

The uses of asbestos subject to the SNUR are:

- adhesives, sealants, and roof and non-roof coatings;
- arc chutes;
- beater-add gaskets;
- cement products;
- extruded sealant tape and other tape;
- filler for acetone cylinders;
- friction materials (with certain exceptions);
- high-grade electrical paper;
- millboard;
- missile liner;
- packings;
- pipeline wrap;
- reinforced plastics;
- roofing felt;
- separators in fuel cells and batteries;
- vinyl-asbestos floor tiles;
- woven products;
- any other building material; and
- any other use of asbestos that is neither ongoing nor already prohibited under the Toxic Substances Control Act (TSCA).

These uses were identified by EPA as “discontinued,” meaning that they are no longer in the marketplace. But the SNUR effectively bans those uses from returning to the marketplace by requiring that EPA be given the opportunity to “evaluate each intended use . . . for potential risks to the health and the environment and take any necessary regulatory action, which may include a prohibition.” Any company seeking to manufacture or import any product falling into one of the categories subject to the SNUR must notify EPA at least 90 days in advance in order to allow EPA to evaluate the proposed use, and no manufacture or import may occur unless and until EPA has made an official determination.

EPA promulgated the SNUR under the authority of TSCA, which underwent a major overhaul in 2016 and has been used by EPA in recent years to issue new chemical regulations, as well as to strengthen and expand existing regulations. In December 2016, EPA selected asbestos as one of the first ten “high priority” substances to undergo risk evaluations under TSCA. EPA then outlined its proposed approach to its asbestos risk evaluation in a “problem formulation” document released in June 2018. While EPA has not yet published its draft risk evaluation for asbestos, the SNUR provides important insight into how EPA’s approach has changed since it published its problem formulation document nearly one year ago.

Importantly, EPA's SNUR indicates that only the following "ongoing" uses of asbestos are currently subject to EPA's risk evaluation:

- imported raw bulk chrysotile asbestos for the fabrication of diaphragms (used in chlorine and sodium hydroxide production);
- sheet gaskets (used in chemical production, e.g. titanium dioxide production);
- brake blocks used in oil drilling equipment;
- aftermarket automotive brakes/linings and other vehicle friction products; and
- other gaskets.

Although cement products, woven products, and packings were originally included in EPA's problem formulation for asbestos, EPA notes in the SNUR that it has since determined those uses are no longer ongoing and therefore will not be included in EPA's forthcoming risk evaluation. This shift in EPA's approach raises significant questions about whether and to what extent other changes have been made since EPA released its problem formulation document, meaning that companies should be on high alert when EPA releases its draft risk evaluation, which could lead to further regulations. The draft asbestos risk evaluation is expected sometime in 2019.

CHEMICALS

The Owensboro Times

OMU: Drinking water in compliance with EPA standards

<https://www.owensborotimes.com/features/community/2019/04/omu-drinking-water-in-compliance-with-epa-standards/>

Ashley Sorce

Friday, April 19, 2019

wensboro Municipal Utilities addressed the Utility Commission Thursday after reports of contaminated drinking water circulated through local media.

OMU is required to report unregulated contaminants, chemicals and microbes that may be present in drinking water, but are not currently subject to EPA drinking water regulations, every five years. In 2004 and 2009 any unregulated contaminants found in OMU's drinking water were not detectable.

According to OMU spokeswoman Sonya Dixon, while those contaminants were reported to the EPA as mandated, they were not required to be recorded in OMU's water quality report because levels were undetectable. In 2014, seven unregulated contaminants reached detectable levels, calling OMU to not only report them to the EPA, but also record them in their water quality report to the community.

The contaminants called into question by local media, hexavalent chromium and molybdenum, were detected in higher levels than the minimum reportable threshold defined by the EPA.

Specifically, OMU reported 1.4 ug/L of hexavalent chromium when the minimum EPA reporting level is .03. Molybdenum was reported at 140 ug/L when the minimum EPA reporting level is 1.

But OMU said they still remain in complete compliance with EPA standard guidelines.

"We would not be delivering water to your home if it was not safe," Dixon said.

According to the EPA, hexavalent chromium, or Chromium-6, occurs naturally in the environment from the erosion of natural chromium deposits and can also be produced by industrial processes. Molybdenum is a naturally-occurring metal that can be found in small amounts in rocks and soil. It is also present in plants, animals and bacteria. According to Dixon, molybdenum is even an additive in vitamins.

General Manager Kevin Frizzell said the EPA adds unregulated contaminants to its list of reportable tests each year. Frizzell said 2014 was the first time hexavalent chromium and molybdenum were required to be reported.

Required to report unregulated contaminants every five years, OMU is set to test drinking water again this summer. Should detectable levels of unregulated contaminants be found again, OMU will report the findings in its water quality report made available to the public in May 2020.

Hexavalent chromium and molybdenum were also detected in the groundwater testing of ash ponds at Elmer Smith Station, conducted under the EPA's Coal Combustion Residuals Rule. Ash ponds are collection basins in the ground for the ash byproduct of burning coal. According to Frizzell, OMU routinely hauls away settled ash from those ponds.

"In that groundwater testing we are looking for compounds in a list provided by the EPA that are detected at 'statistically significant levels,'" Frizzell said.

In recent testing, OMU detected molybdenum at a statistically significant level near the ash ponds. Chromium was detected, but not at a statistically significant level. Frizzell also added that the contaminants found in the drinking water were only found in wells closest to the power plant.

Despite finding significant levels of both hexavalent chromium and molybdenum in the drinking water and again significant levels of molybdenum in the tested areas around the ash ponds, Frizzell said the EPA does not require OMU to take any action.

Owensboro Times spoke with John Mura, executive director of the Office of Communication at the Kentucky Energy and Environment Cabinet, who said his office regulates water utilities like OMU based on maximum contaminant levels (MCLs) that are set by the EPA or by state statute. There are no MCLs set for these two substances.

"These are not regulated chemical contaminants," he said. "Occurrence data are collected through the federal UCMR (Unregulated Contaminant Monitor Rule) to support the EPA Administrator's determination of whether to regulate particular contaminants in the interest of protecting public health. EPA is now weighing the collected data on them to determine if they need to be regulated in the future."

Mura said his office is looking into the possibility that OMU's contamination came from its ash ponds, which he said is not routine.

But Frizzell said OMU has not made any determination if the ash ponds are the source of the two unregulated contaminants in the drinking water.

"We can't definitively say that," Frizzell said. "What we can do is the testing that is required and provide remediation or a corrective action plan."

Frizzell said that plan is already in place. With the anticipated closing of Elmer Smith Station by 2020, coal ash will be reduced by one-third when the first plant is closed in June. The second plant will be retired in June 2020. At that point, the ash ponds located at the decommissioned plant will be removed. Frizzell said this process at other retired coal-fired plants means covering the ponds and converting them to ash landfills.

"What we are going to do voluntarily is remove all of that ash when we close Elmer Smith," Frizzell said, adding that this will happen regardless of how the OMU board votes to decommission Elmer Smith. "So if, and that's an if because we haven't proven anything, but if the power plant is the source of these compounds, we are going to remove the source."

In the meantime, Frizzell said there is no threat to OMU customers' drinking water. Frizzell said the same is true for county water districts, who actually purchase water from OMU. Should a customer have questions about the contaminants they are encouraged to call 270-926-3200 to speak with an OMU representative.

"I absolutely drink a lot of OMU water," Frizzell said. "At these levels, the EPA has not seen fit to regulate these contaminants. We are in compliance with all of our regulations and we are not concerned that our customers are being negatively impacted by drinking OMU water in any way, shape or form."

Given the concern about these contaminants, Frizzell said OMU has kicked off a drinking water system master plan study, which was announced at Thursday's Utility Commission meeting.

"The focus is groundwater," Frizzell said. "That will include where are our new wells are going to be, quality and quantity of water. We are going to actively be looking at what contaminants may be in the water."

The last master plan study is what led to the decision to expand OMU's Cavin Plant. OMU's Plant A, which provides two-thirds of the utility's capacity, was built in 1905 and is deteriorating. It was decided to maximize the newer treatment facility, Plant B — or the Cavin Plant, built in 1994 — from treating 10 million gallons of water per day to 30 million. This will allow the Cavin Plant to take on all of Plant A's treatment so that it may eventually be shut down. The \$46 million expansion is currently underway and is expected to be completed in the next 18 months.

LEAD

Inside EPA

New CDC Data Drives Renewed Criticism On Administration's Lead Plan

<https://insideepa.com/daily-news/new-cdc-data-drives-renewed-criticism-administrations-lead-plan>

Maria Hegstad

Thursday, April 18, 2019

New data from the Centers for Disease Control and Prevention (CDC) showing children most exposed to lead have recently seen increases in their blood lead levels (BLLs) is driving new criticisms over EPA and other agencies' plan to address the potent neurotoxin, with environmentalists charging the agencies do not address the CDC data.

"Even more disturbing" than the increases in BLLs "is the Trump Administration's response to this information," says Tom Neltner, chemical policy director at the Environmental Defense Fund.

"The Administration: Ignored the data in the rosy picture of progress it painted in its recent Lead Action Plan; and Appears to be repeating mistakes of the past by proposing to slash CDC's childhood lead poisoning prevention budget in half," he wrote in a blog post earlier this week.

His criticism stems from data that appear most recently in CDC's February release of a summary report of National Health and Nutrition Evaluation System (NHANES) biomonitoring data, which shows that "after years of progress, in 2015-16 the [BLLs] of more than 2 million young children increased."

Neltner says neither the agencies' December lead plan nor EPA's April 1 status report on how it is implementing the action plan addresses the NHANES data.

"The Plan painted a rosy picture of the progress made in reducing children's exposure to lead. It described the average blood lead levels dropping twenty-fold and the 95th percentile levels dropping 12-fold from 1976-80 to 2013-14. We thought it was odd that the report did not include the NHANES data from 2015-16 -- which were publicly available," EDF's blog states, adding that "the failure to consider the disturbing data continued when EPA released its "Implementation Status Report" on April 1.

"The report makes no mention of the NHANES results for 2015-16 even though the agency had the data and could point to the February CDC report," Neltner says.

EPA did not respond to requests for comment.

But Neltner's blog highlights environmentalists' long-running concerns that the administration is not doing enough to address lead. When the administration released its action plan last year, the critics charged that the plan contained no new enforceable actions.

Administrator Andrew Wheeler sought to deflect the criticism, arguing the agency's commitments to finalizing rulemaking efforts that are already underway are "new."

For example, he cited the agency's plans to propose a measure for strengthening its lead and copper rule (LCR), which could potentially drive replacement of some utility owned lead service lines, though it is unclear how it will address lines on private property.

The measure had been expected last summer but was delayed as Wheeler asked staff to craft a plan that will help prioritize the "most corrosive" lines for replacement. Earlier this month, Wheeler said the rule is a White House priority and promised its release this summer but municipal water officials are skeptical and recently pressed EPA's water chief to give assurances on a schedule.

EPA is also facing a court-ordered deadline to finalize in June a final rule strengthening its lead dust hazard standards for lead based paint in housing, but environmentalists and some states have already expressed concern that the proposed version of the rule did not go far enough in protecting exposed residents.

Overestimated Adverse Effects

In addition to the administration's agenda, environmentalists are also concerned about a pending re-analysis of a landmark 2005 study conducted by Bruce Lanphear, a professor at Simon Fraser University in British Columbia, Canada, and colleagues, that led EPA and other agencies to strengthen rules and policies to protect children from even low doses of the potent neurotoxin.

Scientists with the consulting firm Ramboll say the Lanphear study could have overestimated the adverse effects of such exposures due to confounding factors, opening the door to rolling back or retaining existing standards.

But the recent NHANES data show BLLs are increasing. Children with "average" BLLs, who had seen a 48 percent decrease in their BLLs between the NHANES measuring years 2007-8 and 2013-14, saw "only a 3 percent decrease in 2015-16," Neltner writes.

More concerning, children at the highest ends of exposure saw increases in their BLLs. At the 75th percentile BLL -- the BLL at which 75 percent of children are below that level -- there was a 2 percent increase in BLLs between 2013-14 and 2015-16. Those increases are even more pronounced at higher BLLs, Neltner writes.

Children at the 90th percentile -- whose BLLs decreased 51 percent between 2007-8 and 2013-14 -- saw an 18 percent increase in 2015-16. And children at the 95th percentile saw a 23 percent increase in that time.

Neltner says that this increase could be temporary, like a "smaller uptick [in BLLs that occurred] in 2007-08 (which may have been related to the housing crises), it may only be short-term setback, nonetheless it bears careful examination."

Newer NHANES data from 2017-18 will probably be released over the summer, Neltner tells Inside EPA, which could provide further context for the 2015-16 increases.

Neltner suggests in his blog that the increase seen in the 2015-16 BLL data could be related to a drop in funding for CDC's childhood lead poisoning prevention program (CLPPP), which provides grants to state and local health department programs.

The program saw a drop in funds “from 2012 to 2014 under the Obama Administration [which] may have played a major role” in the increase in BLLs, he writes. “These cuts eliminated and left only enough funds for CDC to serve as a caretaker.”

Neltner notes that “in 2014, Congress restored the CDC CLPPP funding. While state and local programs ramped up their efforts, there is no question that momentum was lost when the funding was cut.”

At the same time, the Obama EPA proposed similar cuts to lead exposure reduction programs at EPA.

The Trump EPA continues to propose these cuts, most recently in the fiscal year 2020 budget request, which seeks to eliminate EPA's Lead Risk Reduction Program, though it is seeking authorization for a new \$50 million grant fund “for schools to identify, prevent, reduce and resolve environmental hazards” such as lead, asthma triggers, and other toxic chemicals in schools.

Asked about the new grant proposal, Neltner was unaware of it. “Our focus has been on home and child care where the most vulnerable children are,” he tells Inside EPA.

The Detroit News

Ruling: Residents' EPA suit in Flint crisis can move forward

<https://www.detroitnews.com/story/news/michigan/flint-water-crisis/2019/04/19/ruling-epa-flint-water-crisis-lawsuit/3516388002/>

Friday, April 19, 2019

A federal judge ruled Thursday that a lawsuit Flint residents filed against the government over the city's water crisis can move forward.

The residents sued the U.S. Environmental Protection Agency in 2017 for "mishandling" the crisis, arguing that agency officials negligently responded, including by failing to use its enforcement authority under the Safe Drinking Water Act to intervene, investigate and warn about the health risks.

The government last year sought to dismiss the suit. Its attorneys argued alleged misconduct is exempt from liability under the Federal Tort Claims Act's discretionary function exception.

One of the plaintiffs in the suit is Jan Burgess, a former Flint resident who was responsible for first notifying the EPA of the growing water problems in October 2014. Six months earlier, the city had started drawing its water from the Flint River after ending a decades-long relationship with Detroit's system.

In January 2016, The Detroit News reported that EPA Region 5 water expert Miguel del Toral warned of Flint water problems in a June 2015 internal memo, but then-Region 5 Administrator Susan Hedman said she sought a legal opinion on whether the EPA could force action that wasn't completed until November 2015 — after the state recognized the crisis.

It was not until Jan. 21, 2016, months after testing had indicated high levels of lead in the water, that EPA issued an emergency order in the crisis. The agency's probe into the crisis was announced the same day.

In her opinion Thursday, U.S. District Judge Linda Parker said that when passing the Safe Water Drinking Water Act, “Congress intended to leave the primary responsibility for overseeing public water systems with the states,” but “expressly directed the EPA to intervene under specified conditions.”

“...The EPA's failure to warn Flint residents of the severe health risks the city's water supply posed to them cannot be justified by any permissible

exercise of policy judgment,” Parker said. “Within weeks of the switch to the Flint River, the people of Flint suffered rashes and hair loss.

"The EPA was well aware that the Flint River was highly corrosive and posed a significant danger of lead leaching out of the city's lead-based service lines at alarming rates into residents' homes. The EPA was well aware of the health risks posed by lead exposure, particularly to children and pregnant women. ... Further, the EPA knew that (the Michigan Department of Environmental Quality) and Flint officials were not warning Flint's residents that they were being supplied lead-laced water."

Parker also concluded that the residents' claims about the government negligently responding to citizen complaints are not barred by the the Federal Tort Claims Act's discretionary function exception.

"... Once the government decided to act, it was required to do so without negligence," she wrote.

EPA representatives did not immediately respond to a request for comment Thursday night.

A report by agency's Office of Inspector General released in July found that "management weaknesses" delayed federal intervention in the Flint water crisis after Michigan failed to prevent lead contamination.

The inspector general cited management problems at the EPA and its Region 5 office in Chicago, which oversees Michigan. Regional managers did not properly address state actions to "disinvest" in safe drinking water requirements dating back to 2010, concluding they were intended to be temporary and not affect public health, inspectors said.

The report, based on two years of research and in inquiries, also repeatedly noted the MDEQ holds primary responsibility for ensuring compliance with safe drinking water requirements.

The Flint system returned to treated Great Lakes Water Authority water in October 2015.

PCBs

E&E News

Honeywell to clean up pollution near former N.C. plant

<https://www.eenews.net/greenwire/stories/1060182445/search?keyword=epa>

Associated Press

Friday, April 19, 2019

Federal authorities say they've reached a proposed settlement with two companies for the cleanup of a former chemical plant near the Cape Fear River.

The Justice Department and EPA said in a news release yesterday that the settlement was reached with Honeywell International Inc. and International Paper Co. The companies have agreed to treat, store and dispose of soils and sediments contaminated by metals that include mercury and PCBs.

The settlement says that from 1963 to 2000, the LCP-Holtrachem plant made chemicals such as sodium hydroxide, liquid chlorine, hydrogen gas, liquid bleach and hydrochloric acid in Riegelwood in Columbus County, adjacent to the Cape Fear River.

A federal court must approve the settlement. — Associated Press

Poughkeepsie Journal

Hudson River among 'most endangered' rivers, group says

<https://www.poughkeepsiejournal.com/story/news/local/2019/04/19/hudson-river-among-most-endangered-rivers-group-says/3513774002/>

USA Today Network Report
Friday, April 19, 2019

Days after the U.S. Environmental Protection Agency announced General Electric Co. would not be immediately forced to continue dredging toxic PCBs from the Hudson River, the river was given a dubious distinction.

Environmental group American Rivers released its annual list of the USA's top 10 "most endangered" rivers, and the Hudson was ranked as the second most endangered.

New Mexico's Gila River earned the top "dishonor" according to the report released Tuesday.

These rivers aren't the nation's "worst" or most polluted rivers. According to American Rivers, three factors put rivers on the list: the significance of the river to human and natural communities; the magnitude of the threat to the river and its nearby communities, especially in light of a changing climate; and a major decision that the public can help influence in the coming year.

"Climate change is striking rivers and water supplies first and hardest," said Bob Irvin, President and CEO of American Rivers, in a statement. "America's Most Endangered Rivers is a call to action. We must speak up and take action, because climate change will profoundly impact every river and community in our country."

The Hudson River PCB (polychlorinated biphenyls) cleanup is one of the largest environmental cleanups in modern history. GE dumped approximately 1.3 million pounds of PCBs from capacitor manufacturing plants in Fort Edward and Hudson Falls into the Hudson River during a 30-year span ending in the late 1970s. More than two-thirds of the PCBs remain in the Hudson. PCBs are a fire retardant and insulator that is a likely carcinogen.

On April 11, the EPA announced it would not require GE to continue cleaning unless additional studies show the cleanup failed to make the river significantly cleaner. That determination could take five decades, the agency said.

The river is also in the midst of a \$40 million cleanup conducted by Central Hudson Gas & Electric Corp.

A manufactured gas plant, or MGP, operated from 1911 through the 1950s on North Water Street, producing gas from coal to power local homes and businesses. It was one of hundreds of MGPs throughout the state, which researchers later discovered created the dense and oily byproduct known as coal tar, according to the state Department of Environmental Conservation.

Coal tar is responsible for the oily sheen that can sometimes be seen on the river and, according to environmental group Riverkeeper, blankets the river bottom in spawning areas for several species.

In May, Central Hudson, which now owns the property, began excavating at the former North Water Street plant, digging up coal tar that had become mixed in with sediment.

American Rivers has been compiling an annual list of the nation's most endangered rivers since 1984.

Here is the list of American Rivers' top 10 most Endangered Rivers.

1. Gila River, New Mexico
2. Hudson River
3. Upper Mississippi River, Illinois, Iowa, Missouri
4. Green-Duwamish River, Washington
5. Willamette River, Oregon
6. Chilkat River, Alaska
7. South Fork Salmon River, Idaho
8. Buffalo National River, Arkansas

9. Big Darby Creek, Ohio

10. Stikine River, Alaska

PESTICIDES

Florida Today

Bees endure countless threats in Florida

<https://www.floridatoday.com/story/news/local/environment/2019/04/19/bees-endure-countless-threats-florida/3445448002/>

Jim Waymer

Friday, April 19, 2019

COCOA BEACH — Tim Gould by now is well attuned to all the buzz beneath his roof.

"I don't know why they're picking on me," Gould says, as wildlife trapper Leo Cross climbs a ladder to vacuum out the beehive inside his roof. "They've lit me up multiple times."

No hard feelings: Gould wants to save his tormentors. He knows their importance as pollinators for a third of what we eat. He knows Cross won't kill them.

He knows they're in deep trouble. And if they don't make it, likely, neither will we.

Scientists call it a "pollinator health crisis." One in three mouthfuls of everything we eat directly or indirectly rely upon honeybee production, according to the U.S. Department of Agriculture. Pollinators contribute more than \$24 billion to the American economy, \$15 billion from honey bees alone.

But domestic pollinators have plummeted for decades, especially native bees, recent research shows. Managed honey bees dropped from 6 million colonies in 1947 to 2.5 million now. A phenomenon called colony collapse disorder killed 23 percent of the honey bee population after the winter of 2006-2007. Meanwhile, monarch butterflies have dipped 84 percent.

Fewer pollinators pose a serious risk to domestic crops, ecological health and the economy in Florida and nationwide, scientists warn. Like canaries in a coal mine, bees also reflect the overall health of the environment. The rapid loss of bees over the past decade may signal a decline in the health of the planet, scientists warn, and a symptom of much larger environmental problems.

But Florida's bees, appear to be — for the moment — on the mend, beekeepers and state agricultural officials say. They continue to face a litany of threats from pests, pesticides and diseases, as well as hurricanes. But Florida has the advantage of yearly boosts from commercial beekeepers up north who bring their bees to winter here, providing a spillover effect for beekeepers like Clifton Best.

He sees first hand — without using gloves — a bee comeback in Brevard. It manifests in the daily calls he fields from fearful homeowners wanting to rid their property of unwanted bees without using pesticides to kill them.

"I'm doing so much bee removal, I don't have time to sit still," Best says from his 2-acre bee operation in Canaveral Groves.

Earlier this month, a Melbourne man was stung more than 100 times while trying to save his dog from a swarm of bees. He was hospitalized and recovered, but his dog died. Leo Cross, of Florida Wildlife Trappers, responded to the scene, vacuuming thousands of bees from inside the walls of the the Myrtlewood Road home.

Clifton Best's bee haven is nestled in a remote wooded area. Through a fenced-in narrow passageway, Best keeps 50 bee colonies in wooden boxes propped up on concrete blocks among towering trees. A constant roar of bees amplifies each time Best approaches the boxes.

Nationwide, bee colonies like his are not doing so well. A 2015 USDA national survey of beekeepers found mixed trends for bee colonies. But Florida's bee colonies grew from about 150,000 colonies in 2007 to almost 400,000 colonies in 2014. But those numbers can be misleading, scientists say, because beekeepers often split their colonies. So more colonies doesn't necessarily mean more bees. The surveys also don't take into account the health of the colonies.

Best credits the increase in bees he sees to state efforts to ease rules on allowing beekeepers to remove nuisance bees, mitigating others from excessive use of pesticides to rid homes of bees.

Other state actions could soon help as well. Several bills are pending in the Florida Legislature to create a special "Save the Bees" license plate for the Florida State Beekeepers Association. A portion of the money would go toward raising awareness of the importance of beekeeping in Florida agriculture by funding honeybee research, education, outreach and husbandry.

State actions "nascent and anemic"

But state laws and policies to protect bees and other pollinators are in their infancy, researchers who study pollinators say.

In a paper published this year in the journal Environmental Science and Policy, Missouri researchers called for global monitoring and conservation agreements. They found that since 2000, 36 states have passed 109 new laws addressing beekeeping, pesticides, habitat, awareness and research.

They called state efforts, with few exceptions "nascent and anemic steps in addressing a pollinator health crisis."

A mere nine states — Arizona, California, Connecticut, Idaho, Indiana, Maryland, Minnesota, Oregon and Vermont — have enacted legislation to protect pollinators from pesticides.

But the Missouri researchers pointed to some promising recent developments, including increased awareness and alarm about pollinator losses and the threats to food security and economic stability.

"They're beginning to see that not all insects are pests," Damon Hall, an assistant professor at University of Missouri's School of Natural Resources and lead author on the study.

While market interest and investment in the honey bees, which Europeans brought here, Hall says the much bigger worry is native bees, of which there are 4,500 species in North America. "We don't know how important native bees are to our crops," Hall said.

In October, the National Conference of State Legislators brought attention to the issue in a report that also called on more state and federal protections for pollinators.

Several federal bills have been introduced in recent years to protect pollinators. The Saving America's Pollinators Act of 2015 directs the U.S. Environmental Protection Agency to take actions related to pesticides, including suspending the registration of neonicotinoid pesticides, a class of nicotine-based insecticides. EPA prohibits use of certain neonicotinoid pesticides when bees are present.

"I think they need a more thorough review," Hall said.

Colony Collapse Disorder baffles

Colony Collapse Disorder (CCD), which causes rapid and unexpected bee loss within a hive, continues to confuse scientists, who have proposed multiple theories as to the cause, but nothing definitive. Scientists are studying multiple

potential causes, which some suspect may not even be a new phenomenon. Inquiries have pointed to malnutrition, genetically modified crops, a mite that transmits viruses to bees, or some undiscovered pests or diseases.

In 2011, countless bees died for unknown reasons near Brevard's southern border, leading some to suspect it was a case of CCD.

State agricultural investigators determined the South Brevard bees were being killed via sabotage, according to University of Florida, Institute of Food and Agricultural Sciences Extension officials. The bee's food was spiked with a pesticide, though no charges were ever filed.

Bees can carry granular pesticides from residential landscapes back to hives, mistaking it for pollen, with deadly consequences.

So experts recommend getting a beekeeper to remove the bees.

County lightens up on bees, too

With emerging threats from Zika, dengue and chikungunya viruses that thrives in Florida's extreme wet conditions, county mosquito control officials must weigh that risk with the potential harm pesticides pose to pollinators.

Brevard's pesticide applicators are licensed in public health by state agriculture, said Joseph Faella, director of Brevard County Mosquito Control, said via email.

They follow product labels and account for wind, rain, time of day, habitats, and other site conditions to prevent any inadvertent environmental impacts, he added.

When chemical spraying is a must, the county sprays at least 30 minutes after sunset, when bees and other pollinators are generally inactive, he said.

Brevard's flooding from hurricanes and other storms resulted in an overall reduction in mosquito-control pesticide use over the past five years, Faella added.

The county captured floodwaters within 28,000 acres of lands surrounded with earthen dikes used to manage water levels in order to eliminate mosquito egg laying opportunities.

That's one method of reducing mosquito breeding, in what's called integrated pest management (IPM). The county also uses biological control and outreach education, first trying to get folks to eliminate water holding containers (and sometimes stock fish).

Horticulturists say maintaining diverse plant life in your backyard can help promote pollinators.

On Best's land, bees have their pick of a diverse array of plant and tree life. They swarm around Clifton Best as he stands in front of their hive box.

"It agitates them a little bit when we get in front of their entrance," Best says as he holds a metal can of smoking pine needles in front of the hive.

The smoke blocks the pheromones that signal them to sting an invader.

He cracks the lid open with a metal wedge. The static-like buzzing roar heightens in volume.

Best provides them with hive racks. The rest is up to them, as long as we stay out of the way.

"They don't need us. We need them," Best says.

The Washington Post

Court: EPA has 90 days to justify use of dangerous pesticide

https://www.washingtonpost.com/national/energy-environment/court-epa-has-90-days-to-justify-use-of-dangerous-pesticide/2019/04/19/a7e16770-62ce-11e9-bf24-db4b9fb62aa2_story.html?utm_term=.a4d37a3ea81a

Associated Press

Friday, April 19, 2019

SAN FRANCISCO — A federal appeals court has given the Environmental Protection Agency 90 days to justify why a widely used but dangerous pesticide should stay on the market.

The 9th U.S. Circuit Court of Appeals on Friday issued the order at the request of a coalition of farmworker and environmental groups. The attorneys general for several states, including California, Washington, New York and Massachusetts, joined the case.

The groups sued after then-EPA chief Scott Pruitt reversed an Obama-era effort to ban chlorpyrifos, which is widely sprayed on citrus fruit and other crops.

Last summer, a three-judge panel of the court ordered the EPA to ban all sales of the pesticide. The court decided to reconsider that ruling with a slate of 11 judges, and those judges Friday gave the EPA three months to respond to the plaintiffs' objections.

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PFAS

The Detroit News

PFAS-related suits gain steam as litigants hit Wolverine Worldwide

<https://www.detroitnews.com/story/news/local/michigan/2019/04/19/pfas-suits-litigants-hit-wolverine-worldwide/3437290002/>

Leonard N. Fleming

Thursday, April 18, 2019

Grand Rapids — Some of the nation's high-profile environmental law firms, along with Michigan-based ones, are waging legal battles related to PFAS contamination in the state after decades of waste dumping by a popular shoe manufacturer that has seeped into private wells.

The civil lawsuits over per- and polyfluoroalkyl substances, the so-called forever chemicals, have been grinding away quietly for months. Depositions are being taken of employees and top officials of Wolverine Worldwide, 3M and others involved in the toxic contamination cases that have gripped west Michigan over possible health risks for more than a year.

PFAS has links to health risks such as thyroid disease, increased cholesterol levels, and kidney and testicular cancers. State officials are conducting a two-year assessment of the blood serum and drinking water samples from roughly 800 Kent County residents, half of which have been exposed to high PFAS levels through their water supply and half of which have low to no PFAS in their water.

While the Grand Rapids-based law firm Varnum represents more than 200 Kent County residents in individual state court cases, law firms from New Jersey, Chicago and South Carolina have formed a partnership with Metro Detroit firms to represent a handful of residents to take on Wolverine Worldwide, the shoe giant located north of Grand Rapids.

Sandy Wynn-Stelt, 59, who is represented by the Varnum firm, said she and other Belmont residents "naively thought Wolverine would work with us and resolve this." But she said "it became pretty clear pretty quickly that there was no intent to work with us" to find a resolution.

Wolverine Worldwide has defended itself, noting it has helped sample water from private wells, provide bottled water for affected residents and provide water filters for homes. It argues it "continues to work tirelessly on behalf of our community," the company said in a statement.

The lawsuits, along with a federal class-action suit, are among a flurry of legal skirmishes. Wolverine officials last year sued 3M in federal court, accusing the maker of Scotchgard fabric protector of withholding key information about chemicals used on Wolverine's shoe products, some of which became scraps that were dumped into the ground.

PFAS-related suits have been filed in other parts of the country, such as in upstate New York. But Michigan has become a flash point for the issue because of the scores of contamination sites across the state and Gov. Gretchen Whitmer's push for tougher health standards due to lagging U.S. Environmental Protection Agency rule-making.

"It's really important litigation because PFAS is an emerging issue, and not just in Michigan but in different parts of the country," said Esther Berezofsky of the Berezofsky Law Group, which is leading a group of out-of-state attorneys suing Wolverine. "It's important because there's been a concerted effort on behalf of the industry that manufactures these chemicals to lobby over many decades to keep them from being regulated."

If the civil cases aren't settled, there could be as many as four trial days or more beginning in 2020, according to the attorneys.

Chicago, N.J. firms involved

Among the out-of-state firms are New Jersey-based Berezofsky, Motley Rice in South Carolina and Wexler Wallace in Chicago. They are joined by Sommers Schwartz in Southfield, Pitt, McGehee, Palmer & Rivers in Royal Oak and Warner Norcross & Judd in Grand Rapids.

Berezofsky's firm also has been involved with the class-action lawsuit over the Flint water crisis contamination. In that litigation, former Gov. Rick Snyder was reinstated as a defendant. Motley Rice helped negotiate the BP Deepwater Horizon settlement

The number of law firms and attorneys involved in the PFAS cases indicate the issue is "very complex and there are a lot of moving parts" to go with millions of documents dating back decades, Berezofsky said.

"It's important because these chemicals are very persistent in the environment and they are very persistent in people once people are exposed to them," she said.

Wynn-Stelt knows about PFAS exposure. The Belmont resident who lives across from one of the Wolverine dumpsites has had PFAS levels in her drinking water ranging from 21,000 to 60,000 parts per trillion — 300 times to 855 times more than the national health advisory standard.

In 2016, Wynn-Stelt's husband died of liver cancer, less than a month after being diagnosed. The following year, the Michigan Department of Environmental Quality tested and found contaminants in her water system, making her think there was a link to his untimely passing.

"They tested, and they found this extraordinarily high level of PFAS. They tested again perhaps thinking it was a fluke because at that time it was some of the highest that had ever been seen in private wells," Wynn-Stelt said. "It was even higher the second time."

The Rockford-based Wolverine said in a statement that while it "continues to work tirelessly on behalf of our community, we have repeatedly said that we will vigorously defend ourselves against litigation and take aggressive action to ensure that all involved parties — including 3M and our insurers — take responsibility for this matter."

3M "developed, tested, manufactured and sold Scotchgard to Wolverine and millions of others for decades, but has repeatedly refused to accept any responsibility for the impacts" of the toxins that have now affected west Michigan residents, the shoemaker said.

Officials for Minnesota-based 3M did not return a call for comment.

Landfill cleanup efforts targeting forever chemicals are shown in 2017 at the House Street site north of Grand Rapids. Landfill cleanup efforts targeting forever chemicals are shown in 2017 at the House Street site north of Grand Rapids. (Photo: Katy Batdorff / Special to the Detroit News)

Discontent about Wolverine's efforts

Apprehension about PFAS was prompted in communities north of Grand Rapids in the summer of 2017, when Wolverine revealed that chemicals from making popular products like Merrell, Stride Rite and Hush Puppies shoes had leached into wells. The company began to cooperate with state environmental officials to locate dump sites as residents panicked.

Wolverine said it has spent \$30 million to help residents in the Grand Rapids area. It has sampled over 1,500 residential wells and installed more than 70 monitoring wells; offered bottled drinking water to every home being sampled; provided over 500 filters and over 200 point-of-use filters to screen for PFOA and PFOS, two kind of PFAS compounds.

The shoemaker also said it worked with the state Department of Environmental Quality and U.S. EPA at the House Street disposal site and former Tannery site to determine the possible sources and extent of PFOA and PFOS.

But the affected people feel let down by Wolverine, said Aaron Phelps, a partner with the Varnum firm who still meets with affected residents who are not part of the lawsuits.

"For a long time, people bought into the Wolverine PR that they were going to do the right thing and they were going to make things better, they were going to fix it and take care of people and you didn't need to bring a lawsuit," Phelps said. "... There's no municipal water, no monetary relief for anybody, except deny that there's a problem."

Another Varnum client, Terry Hula, 59, of Belmont, said she has had major concerns since state officials told her about the contamination of her private well and said in October 2018 that her water tank had failed.

"Because of the contamination, we will not be allowed to dig in another well," Hula said. Water is shipped in once a week, she said, and placed in a different 1,500-gallon tank for weekly use by Hula until municipal water is brought in.

While Wolverine has paid for the water delivery and she's "grateful for that," Hula said it's really about "living one day at a time and hope that the right people will step up and do that right thing. We all have health problems and we of course wonder if they are connected" to PFAS.

The PFAS lawsuits are significant because "the contamination levels here are very high and they affect a large number of people," Varnum lawyer Phelps said. More people are likely to come forward to seek legal representation, he said, but they have until sometime next year because the statute of limitations is three years from when the PFAS was discovered.

TOXICS

Inside EPA

EPA Urges Court To Reject Challenge To Mercury Inventory, Waivers

Maria Hegstad

Friday, April 19, 2019

EPA is urging a federal appellate court to dismiss a suit brought by states and environmentalists seeking to strengthen the agency's June 2018 mercury inventory and repeal the categories of reporting waivers it included, arguing that its rule met requirements that Congress included in its reform of the Toxic Substances Control Act (TSCA).

"EPA designed its mercury inventory reporting rule to meet its statutory duties under [TSCA], while complementing existing sources of information, and minimizing data collection and reporting burdens. This approach was logical. And it falls well within the broad discretion afforded EPA under TSCA," EPA argues in its April 17 response to the petitioners' suit.

"Petitioners ask this Court to vacate portions of the mercury inventory reporting rule. Their request is based on a distorted and selective reading of TSCA's requirements," EPA's brief adds.

EPA's June 2018 final rule creating an inventory of mercury supply, use and trade exempts data that has already been reported to an existing database, known as the Interstate Mercury Education and Reduction Clearinghouse (IMERC), that is run by 13 states, including Vermont.

EPA's rule under TSCA section 8(b)(10)(D) is one of a series of actions the agency was required to take within two years of TSCA's 2016 update. It requires reporting from manufacturers of mercury or mercury-added products to support an inventory of mercury supply, use and trade in the United States.

While EPA says that the inventory will inform regulation to further reduce mercury use, the rule did not propose any such steps at its issuance. The rule is also intended to help the United States comply with its international obligations to regulate mercury under the United Nations' Minamata Convention on Mercury, signed by the Obama administration. The treaty took effect in August 2017.

But EPA's rule rejected several calls from the states that had sought to either scrap the waivers or harmonize state and federal reporting to ensure a comprehensive national database. Specifically, EPA's rule exempts from reporting certain companies who incorporate components containing mercury in their products and also exempts companies who manufacture quantities of mercury in excess of requirements for reporting under EPA's existing Chemical Data Reporting Rule (CDR).

The "Reporting Requirements for the TSCA Mercury Inventory" rule says that even though there is a "non-alignment" of data in existing state and federal programs, the agency believes it can still create a "totality of available data" to adequately monitor mercury trends.

Appellate Suit

Both Vermont and the Natural Resources Defense Council (NRDC) sued EPA over the rule, a consolidated case now being heard in the U.S. Court of Appeals for the 2nd Circuit.

Vermont argues in its Dec. 10 brief that EPA's decision to exempt certain categories from reporting violates the Administrative Procedure Act (APA) "because the exemptions create new gaps in information in contradiction of Congress's intent to fill those gaps."

As a result, the state says, EPA's decision is arbitrary and capricious or otherwise not in accordance with law."

Vermont says the exemptions the agency allowed "do not align with the primary purpose of" the updated TSCA, which "requires EPA to create a new, national inventory of mercury-containing products in U.S. Commerce" and "specifically directed EPA to 'coordinate the reporting' of the mercury inventory with IMERC."

Vermont also argues that EPA's exemptions "hinder" its and the rest of the IMERC states' abilities to enforce their own existing laws and fulfill federal obligations.

"Only EPA is capable of ensuring the level of compliance necessary to produce a complete and accurate inventory of mercury supply, use, and trade in the United States because it has broad enforcement power and resources ... States are incapable of collecting the same reporting data from the complete universe of mercury-added products. The complete federal inventory that Congress demands in the TSCA balances the shortcomings of state-level enforcement."

Similarly, NRDC argues in its Dec. 7 brief that EPA's exemptions "ensure that EPA will once again fail to compile an accurate, comprehensive inventory," are unlawful, "and must be set aside."

NRDC says that EPA's exemption for components is "foreclosed" by TSCA. And it argues that the second exemption, which amends EPA's prior existing CDR rule, "exceeds the limited discretion TSCA affords EPA. ... there is nothing 'unnecessary or duplicative' about the data required under [CDR] from manufacturers and importers who are also subject to the CDR program.

Vermont and NRDC's arguments are supported by a Dec. 28 amicus brief from Oregon, Connecticut, Hawaii, Massachusetts, Maine, Maryland, Minnesota, New Jersey, Pennsylvania, Rhode Island, and Washington.

EPA Discretion

EPA, however, argues that the inventory rule it finalized meets TSCA and is within the discretion Congress allowed it in the statute.

"When read in full, the relevant provisions of TSCA expressly confer on EPA discretion to decide what information to collect under the mercury inventory reporting rule and when to collect it. EPA reasonably exercised this discretion by focusing reporting requirements on those manufacturers and importers that actually use mercury in a manufacturing process or who insert mercury into products in the first instance," EPA's reply states.

"The Agency supported its decision with a reasoned rationale, one based on a sound interpretation of the statute's text, including the directive to avoid duplicative reporting, and on practical considerations of regulatory efficiency."

EPA argues that TSCA section 8(a)(5)(A) requires it, "to the extent feasible" to "not require reporting which is unnecessary or duplicative."

As one example, EPA argues that its CDR exemption eliminates duplicative reporting for those companies that would otherwise be required to report mercury uses to EPA twice, through the inventory and through CDR. "Both the CDR rule and mercury inventory reporting rule require mercury manufacturers to report the quantity of mercury that they manufacture. Unlike the CDR rule, however, the mercury inventory reporting rule has no reporting threshold. ... So the universe of reporters subject to the mercury inventory reporting rule is much broader than under the CDR rule. A handful of persons are subject to both programs. ... those CDR reporters are 'not categorically exempt from the mercury inventory reporting requirements,' and must still report other information, including the amount of mercury that they store or distribute in commerce."

Sierra Sun Times

California Attorney General Opposes the Trump Administration Plan to Undermine Mercury and Air Toxics Standards

<https://www.goldrushcam.com/sierrasuntimes/index.php/news/local-news/18303-california-attorney-general-opposes-the-trump-administration-plan-to-undermine-mercury-and-air-toxics-standards>

Friday, April 19, 2019

SACRAMENTO – California Attorney General Xavier Becerra has joined a multistate comment letter to oppose an Environmental Protection Agency (EPA) proposal undermining emission standards for power plants. The proposal would unlawfully remove justification for Clean Air Act regulation of mercury and air toxics emissions from coal-and oil-fired

power plants. These power plants are the largest sources of airborne mercury emissions that cause serious and widespread public health, environmental, and economic harms.

“The EPA’s proposal to weaken or eliminate standards protecting against hazardous pollutants endangers public health and poisons our environment,” said Attorney General Becerra. “Once again the Trump Administration is picking and choosing its facts to prop up dirty power, while the American public suffers the consequences.”

The Clean Air Act requires the EPA to set pollution control standards for hazardous air pollutant emissions from power plants, if doing so is “appropriate and necessary.” In 2016, the EPA found that the standards were “appropriate and necessary” after a detailed determination that the massive benefits dwarfed the estimated costs. With its new proposal, the EPA would reverse this finding and instead conclude that regulation of these power plants is not “appropriate and necessary.” The EPA would reach this new conclusion by relying on outdated cost estimates that have since proven too high, while largely ignoring the tremendous public health and environmental benefits of the existing standards.

In the letter, the Attorneys General assert that the EPA does not have legal or factual basis for the proposed determination that the costs of regulating toxic air emissions outweigh the benefits. The annual public health and environmental benefits of the current standards are expected to range from \$37 to \$90 billion, including the prevention of 11,000 premature deaths. This significantly outweighs the \$9 billion in regulatory costs.

The coalition of 21 Attorneys General and five cities and counties emphasize that individual states cannot adequately protect against dangers posed by hazardous air pollutants without a federal backstop. Failure to regulate mercury and air toxic standards could cause serious consequences – including an increase in neurological damage, cancer, and acute and chronic respiratory diseases, particularly for children and women of child-bearing age.

Attorney General Becerra joins Massachusetts Attorney General Maura Healey in filing the letter, along with the Attorneys General of Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia, as well as the City Solicitor of Baltimore; the Corporation Counsels of Chicago and New York City; and the County Attorneys of Erie County, New York and the County Counsel for the County of Santa Clara, California.

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